8 32.

SUPREME COURT OF THE UNITED STATES.

No. 104.

THOMAS TOWNSEND, PLAINTIFF IN ERROR,

vs.

ROBERT JEMISON.

IN ERROR TO THE DIST. COURT U. S. FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

Exemplification.

ROBERT JEMISON
vs.
THOMAS TOWNSEND.

Pleas had at a district court of the United States for the northern district of Mississippi, began and held at the town of Pontotoc, in said district, on the first Monday of June, 1842. Present, the honorable Samuel J. Gholson, judge of said court.

Be it remembered, that on the 21st day of May, A. D. 1842, Robert Jemison, who is a citizen of the State of Alabama, sued out of the office of the clerk of the district court of the United States for the northern district of Mississippi, his certain summons in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, without delay, to summon Thomas Townsend, who is a citizen of said district, that he be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the 1st Monday of June next, to answer to Robert Jemison, who is a citizen of the State of Alabama, in an action of trespass on the case in assumpsit to his damage ten thousand dollars; and that he do file his plea or defence with the clerk of said court on or before the meeting of the same, or judgment will be given against him by default; and have then there this writ.

Witness, Samuel J. Gholson, esquire, judge of said court, at Pontotoc, in said district, the 1st Monday of December, A. D. 1841, and of the independence of the United States the 66.

Issued 21st May, 1842. G. M. RAGSDALE, *Clerk*.

Which said summons is endorsed in the words and figures following, to wit:

"This action of assumpsit is brought to recover the sum of $4,000, with interest at 10 per cent., (paid for defendant,) from 27th January, 1840, to Mississippi Union Bank; defendant agreed to pay for plaintiff same amount in the Commercial Bank of Columbus, Mississippi, in consideration that plaintiff would pay same amount for him to the Mississippi Union Bank, at Macon; this action is brought to recover said sum of money, defendant having failed to comply with his promise.

HARRIS & HARRISON,
Plff's. attys.

Upon which said summons the marshal made the following return, to wit:

"1842, May 27th, executed by delivering the defendant a true copy in person.

A. K. McCLUNG,
Marshal northern district Mississippi.
Per JO. W. CARROLL, *Deputy.*"

Executing and returning, $2 50.
Copy, - - - 1 50.
Mileage, - - 3 00.

At the time of issuing said summons, the plaintiff, by attorney, filed his certain declaration in the words and figures following, to wit:

UNITED STATES OF AMERICA,
The northern district of the State of Mississippi.
District court, June term, A. D. 1842.

Robert Jemison, who is a citizen of the State of Alabama, by attorney, complains of Thomas Townsend, who is a citizen of the northern district of the State of Mississippi, who was summoned to answer the said plaintiff in a plea of trespass on the case upon promises: for that whereas the said defendant, heretofore, to wit, on the 1st day of January, in the year one thousand eight hundred and forty, at, to wit, in said district, in consideration that the said plaintiff would pay for the said defendant, to the Mississippi Union Bank, at its branch in Macon, in the county of Noxubee, in said State, the sum of four thousand dollars, with interest at ten per cent. per annum from nine months after the twenty-fourth day of April, 1839, then and there undertook and promised the said plaintiff, that he would pay for the said plaintiff the same amount to the Commercial Bank of Columbus, Mississippi. And the said plaintiff avers, that he did pay the said sum of money to the said Mississippi Union Bank, at Macon, according to his said agreement, afterwards, to wit, on the same day and year aforesaid, at, to wit, in said district.

And whereas, also, the said defendant afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty, at the place aforesaid, was indebted to the said plaintiff in the sum of *fifteen* thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant, before that time, had and received, to and for the use of the said plaintiff. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff, the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid; and upon such accounting, the said defendant then and there was found to be in arrear and indebted to the said plaintiff in the further sum of five thousand dollars, of like lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff; but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto wholly refused, and still do refuse, to the damage of the said plaintiff of eight thousand dollars; and therefore the said plaintiff brings suit, &c.

HARRIS & HARRISON,
Plaintiff's attorneys.

Defendant's demurrer and plea, filed 10th of June, 1842, as follows, to wit:

In the U. S. district court, Pontotoc, June term, 1842.

ROBERT JEMISON
vs. } 77.
THOMAS TOWNSEND.

And the said defendant, as to the first count in the plaintiff's declaration, comes and defends the wrong and injury, when, &c., and say, actio non, because he says that said first count, the same is not sufficient in law, and this he is ready to verify. And for cause of demurrer shows: 1st, that no legal cause of action is set out in said count; 2d, that there is no legal breach avowed.

And the said defendant, as to the other counts of said declaration, comes and defend the wrong and injury, when, &c., and says he did not undertake or promise, in manner or form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.

STEPHEN COCKE, SMITH & GHOLSON,
Attorneys for defendant.

Afterwards, to wit, on the 10th day of June, 1842, being a day of the June term of said court, the foregoing cause was continued thus:

Friday, June the 10*th*, 1842.

" ROBERT JEMISON, }
vs. } 77.
THOMAS TOWNSEND. }

It is ordered by the court, that the parties have leave to amend their pleadings, and that this cause be continued until the next term of this court.

Plaintiff's amended declaration, filed 6th day of December, 1842, in the words and figures following, to wit:

" UNITED STATES OF AMERICA,
Northern district of Mississippi.
District court, June term, 1842.

Robert Jemison, who is a citizen of the State of Alabama, by leave of the court for that purpose first had and obtained, by attorney, complains of Thomas Townsend, who is a citizen of the northern district of the State of Mississippi, and who was summoned to answer the said plaintiff of a plea of trespass on the case in assumpsit. For that whereas, heretofore, to wit, on the 2 th day of March, A. D. 1840, at, to wit, in said district, in consideration that the said defendant was then and there bound, and liable by note in writing, to the Commercial Bank of Columbus, Mississippi, for one John B. Jones, as his security for about the sum of nine thousand eight hundred and six $\frac{50}{100}$ dollars, besides interest thereon; and was also indebted to the Mississippi Union Bank, at its branch in Macon, in the county of Noxubee, about the sum of three thousand dollars, on a note of four thousand dollars, executed by the said defendant and others, payable at Jackson, at the banking house of the said Mississippi Union Bank at Jackson; and in consideration that the said plaintiff would take up the said last mentioned note to the Mississippi Union Bank, and would also take up the note of the said Jones in the Commercial Bank of Columbus, Mississippi, on which the said Townsend was liable as security as aforesaid, except an amount equal to the amount of said Townsend's liability to the said Mississippi Union Bank, and release the said Townsend from the balance of his said liability to the said Commercial Bank, he, the said defendant, then and there agreed with the said plaintiff, to pay on his said liability, in the said Commercial Bank of Columbus, Mississippi, the same amount which the said plaintiff might take up for him, the said Townsend, in the said Mississippi Union Bank. And the said plaintiff avers, that afterwards, to wit, on the 10th day of May, in the year 1840, he did take up the said Townsend's note, in the said Mississippi Union Bank above stated, according to the said agreement, amounting to the sum of three thousand and ninety $\frac{41}{100}$ dollars. And the said plaintiff further avers, that he did then and there, to wit, on the same day and year last named, at, to wit, in said district, take up the notes of the said John B. Jones, in the said Commercial Bank of Columbus, Mississippi, on which the said Townsend was security as

aforesaid, according to his said agreement. And the said plaintiff in fact says, that the said defendant, well knowing the promises, but contriving and intending to injure and defraud the said plaintiff therein, although the said plaintiff has often requested him to pay the said sum of money so due and owing as aforesaid by the said defendant to the said Commercial Bank of Columbus, Mississippi, according to his said agreement, to wit, the sum of money last named, has wholly refused and neglected to pay the same, and does still neglect and refuse to pay the same, either to the said Commercial Bank of Columbus, Mississippi, or to said plaintiffs.

By means whereof the said defendant became liable, and in consideration thereof, afterwards, to wit, on the same day and year last named, at, to wit, in said county, undertook and *and* faithfully promised the said plaintiff to pay him the said sum of three thousand and ninety dollars and 41 cents, so paid by him, the said plaintiff, to the said Mississippi Union Bank as aforesaid, whenever he should be thereto afterwards requested.

Also afterwards, to wit, on the 26th day of March, in the year 1840, at, to wit, in said district, in consideration that the said defendant was then and there bound and liable to the Commercial Bank of Columbus, Mississippi, by note in writing, for and as the security of one John B. Jones for about the sum of $9,806 50, and was also indebted to the Mississippi Union Bank in the sum of three thousand dollars, on a note executed for four thousand dollars by the said defendant, and others jointly with him, dated about the 12th day of April, 1839, and due at nine months after the 24th day of April, 1839. And in consideration that the said plaintiff would take up the said last mentioned note in the Mississippi Union Bank, at his, the said defendant's, special instance and request, he, the said defendant, then and there undertook, agreed, and promised the said plaintiff to pay the same amount on the said note in the Commercial Bank of Columbus, Mississippi, on which he, the said defendant, was liable as aforesaid. And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said defendant, did, afterwards, to wit, on the 17th day of April, 1840, at, to wit, in said district, take up said note of the said Townsend, in the said Mississippi Union Bank, for the sum of four thousand dollars, on which the said Townsend was liable for the sum of three thousand dollars, with interest thereon from the 24th to 29th January, 1840, at the rate of ten per cent. per annum from the maturity thereof, according to the true intent and meaning of said agreement; and that in so doing he was put to great expense, cost, and trouble, and was obliged to pay therefor the sum of three thousand and ninety $\frac{41}{100}$ dollars, of all which the said defendant afterwards, to wit, on the same day and year, and at the place last mentioned, had notice. And although a reasonable time for the performance of said promise and undertaking on the part of the said defendant has long since elapsed, yet the said defendant, not regarding his said promise and undertaking, but contriving and intending to injure and defraud the said plaintiff in this respect

has not as yet paid the said sum of three thousand and ninety $\frac{41}{100}$ dollars, or any other sum, unto the said Commercial Bank of Columbus, Mississippi, on the said note of the said Jones, on which he, the said Townsend, was so liable as aforesaid, although he, the said defendant afterwards, to wit, on the 10th day of May, in the year 1840, at, to wit, in said district, was requested by the said plaintiff so to do. But the same to pay has hitherto wholly neglected and refused, and still does wholly refuse and neglect. By means the said defendant became liable, and in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at, to wit, in said district, undertook and promised the said plaintiff to pay him the said sum of money last mentioned, when he should be thereto afterwards requested. Also, afterwards, to wit, on the 26th day of March, in the year 1840, at, to wit, in said district, the said defendant, in consideration that he was considerably indebted to the Mississippi Union Bank by several promissory notes then due and owing to said bank, and in consideration that he was liable and bound for one John B. Jones, to the Commercial Bank of Columbus, Mississipi, for about the sum of 9,806 $\frac{50}{100}$ dollars, besides interest as his security by promissory note to said bank And in consideration that the said plaintiff, at the special instance and request of the said defendant, would take any or all the said liabilities of the said defendant to the said Mississippi Union Bank, he, the said defendant, agreed, undertook, and promised, to and with the said plaintiff, that he, the said defendant, would pay to the credit of the said defendant's note in the Commercial Bank of Columbus, Mississippi aforesaid, on which he, the said defendant, was security for the said John B. Jones aforesaid, whatever sum the said plaintiff should pay to the said Mississippi Union Bank, in taking up the notes and liabilities of him, the said defendant, in the said Mississippi Union Bank. And the said plaintiff avers, that he has taken up, to wit, on the 16th day of May, 1840, at, to wit, in said district, the liabilities of the said defendant in the Mississippi Union Bank, to a large amount, to wit, for the sum of ten thousand dollars, for which he has paid a large sum of money, to wit, the sum of eight thousand dollars; of all which the said defendant on the day and year last named, at, to wit, in said district, had notice. And although a reasonable time from the said 16th day of May, A. D. 1840, for the said defendant to pay the same amount into the Commercial Bank of Columbus, Mississippi, on the note of the said John B. Jones aforesaid, has long since elapsed, yet the said defendant, not regarding his said promise and undertaking in this respect, has wholly refused to pay the same, although requested so to do by the said plaintiff, on the day and year last named, at, to wit, in said district. By means whereof the said defendant became liable, and in consideration thereof, afterwards, to wit, on the day and year last named, at, to wit, in said district, undertook and promised to pay the said plaintiff the said sum of eight thousand dollars when he should be thereto afterwards requested.

Also, afterwards, to wit, on the 18th day of November, in the year 1840, at, to wit, in said district, the said defendant was indebted to the

said plaintiff in the sum of eight thousand dollars, lawful money of the United States of America, for so much money before that time lent and advanced to the said defendant by the said plaintiff, and at the special instance and request of the said defendant. And for other money by the said plaintiff before that time paid, laid out, and expended, for the said defendant, and at the like special instance and request of the said defendant. And for other money before that time had and received to and for the use of the said plaintiff; and, being so indebted, the said defendant, in consideration, afterwards, to wit, on the day and year last aforesaid, undertook and promised the said plaintiff to pay him the said sum of money last named when he should be thereunto afterwards requested. Nevertheless, the said defendant, altho' often requested, has not, as yet, paid the said several sums of money above mentioned, or any or either of them, or any part thereof; but to pay the same, or any part thereof, has wholly refused hitherto and still refuses, to plaintiff's damage ten thousand dollars; wherefore he brings suit, &c.

HARRIS & HARRISON,
Plff's attys.

Plff's bill of particulars—Copy.

COLUMBUS, *April 12th*, 1839.

$4,000.

Nine months after the 24th day of April, 1839, we, or either of us, promise to pay to the Mississippi Union Bank four thousand dollars, for value received, negotiable and payable at their banking house in Jackson, to bear interest at ten per cent. per annum after maturity, if not punctually paid.

Credit first drawer.

THOMAS TOWNSEND,
A. F. YOUNG,
ANDREW WEIR,
HENRY BUCKANNAN.
HARRIS & HARRISON,
Plff's attys.

Defendant's pleas to plaintiff's amended declaration, filed on the 9th day of December, 1842, in the words and figures following, to wit:

"The United States of America, northern district of Mississippi, district court, December term, 1842.

ROBERT JEMISON
vs.
THOMAS TOWNSEND.

And the said defendant, by attorney, comes and defends the wrong and injury, when, &c., and says he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him; and of this he puts himself upon the country, &c.

COCKE, SMITH & GHOLSON,
For defendant.

And the pl'ff doth the like.

HARRIS & HARRISON,
Plff's attys."

And for further plea in this behalf, the said defendant, as to the first, second, and third counts of the said declaration, says, that the said plaintiff ought not to have or maintain his action, because he says that, by an act to prevent frauds and perjuries, it is enacted, that no action shall be brought whereby to charge the defendant upon *ay* special promise to answer for the debt, default, or miscarriage of any other person, unless such promise or agreement, or some note or memorandum thereof, shall be in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized. And the said defendant avers that the said plaintiff hath brought his action to charge the defendant for the debt of John B. Jones, and for no other purpose whatever; and that there is no agreement in writing touching the promise of the said defendant, as alleged in said counts of said declaration, to answer for the debt of the said John B. Jones, or any memorandum or note thereof signed by the said defendant, or any other person by him thereunto lawfully authorized. And this he is ready to verify; wherefore he prays judgment, &c.

COCKE, SMITH & GHOLSON,
For defendant.

Plaintiff's replication to defendant's above stated pleas, filed at December term, 1842, in the words and figures following, to wit:

"The United States of America, district court for northern district of Mississippi, December term, 1842.

ROBERT JEMISON
vs. } No. 108.
THOMAS TOWNSEND.

And the said plaintiff, as to the said plea of the said defendant by him secondly above pleaded, saith, that he, the said plaintiff, by reason of any thing by the said defendant in that plea alleged, ought not to be barred from having or maintaining his aforesaid action thereof against him, the said defendant, because he says that he, the said plaintiff, hath not brought his action to charge the said defendant for the debt of John B. Jones, and for no other purpose whatever; but that the said action is brought to charge the said defendant upon his said several original promises and undertakings, founded upon the said several new and sufficient considerations in the said count of said declaration stated and set forth; and this he prays may be enquired of by the country.

HARRIS & HARRISON,
Plff's attys."

Defendant's demurrer to plaintiff's replication, filed at December term, 1842, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
Northern district of Mississippi, district court, Dec. term, 1842.

ROBERT JEMISON
vs.
THOMAS TOWNSEND.

And the said defendant saith, that the *the* said replication of the said plaintiff to the said second plea of the said defendant is not sufficient in law for the said plaintiff to have or maintain his action aforesaid; and this he is ready to verify; wherefore he prays judgment, &c.

GHOLSON & SMITH, *for deft*.

Afterwards, to wit, on the 12th day of December, being a day of the December term of said court, 1842, the further proceedings were had in the aforesaid cause, to wit:

Monday, December the 12th, 1842.

ROBERT JEMISON
vs. No. 108.
THOMAS TOWNSEND.

This day came the parties by their attorneys, and then came a jury of good and lawful men, to wit, jury No. 2, being William O. Cook, and eleven others, who being elected, tried, and sworn, well and truly to try the issue joined, upon their oaths do say, that they find for the plaintiff, and assess his damages to the sum of three thousand four hundred and fifty-one dollars and eighty-eight cents; it is therefore considered by the court that plaintiff recover of said defendant the damages aforesaid by the jury assessed, and also the cost in this cause expended.

Upon which said judgment a writ of fieri facias issued, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you that of the goods and chattels, lands and tenements, of defendant, Thomas Townsend, late of your district, you cause to be made the sum of thirty-four hundred and fifty-one dollars and eighty-eight cents, which Robert Jemison lately, in the district court of the United States for the northern district of Mississippi, has recovered against him for damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendant to the said plaintiff offered, with interest on the said sums, at six per centum per annum, from the 12th day of November, 1842, till paid; also the sum of two hundred and three dollars and twenty-eight cents for his costs by him about his suit in that behalf expended, whereof the said defendant is convicted, as appears of record. And that you have the said moneys before the judge of the said district court on the first Mon-

day in June next, to render to the said plaintiff for his damages and costs aforesaid; and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the first Monday of December, A. D. 1842, and the [L. S.] 67th year of the independence of the United States. Issued the 7th day of January, 1843.

G. M. RAGSDALE, *Clerk*.

Which said writ of fi. fa. is endorsed as follows, to wit:

This fi. fa. is to be returned satisfied; the money having been paid to plaintiff.

HARRIS, CLAYTON & HARRISON,
Plaintiff's attorneys.

Satisfied in full, as pr. attorneys' receipt above, received one hundred twenty-six dollars, and applied in payment of marshal and clerk's fees. *June 10th*, 1843.

A. K. McCLUNG,
Marshal nor. dis. Miss.

Costs endorsed, - - -	$203 28	$203 28	
Marshal fees on this fi. fa.,			
Levy, ent. and ret. - -	2 50		
Mileage - - - -	4 00		
Commissions - - -	73 06	79 56	
Total costs, - -		$282 84	
Credit by - -		126 00	
Amount of costs due, -		$156 84	$156 84

Clerk's fees

Issuing writ - - - - - -	$3 33⅓
Docketing - - - - - -	66⅔
Filing papers - - - - -	5 00
Entering appearances - - - - -	2 66⅔
Motion - - - - - -	66⅔
Order - - - - - -	66⅔
Judgment by default - - - - -	
Swearing witness - - - - -	2 66⅔
Continuances - - - - -	1 00
Venire facias - - - - -	66⅔
Swearing and empannelling jury - - - -	66⅔
Receiving and entering verdict - - - -	66⅔
Entering judgment final - - - -	1 33⅓
Subpœnas - - - - - -	4 83⅓
Taxing cost and copies - - - -	1 00
Issuing execution and docketing - - - -	3 16⅔

Entering return and filing		66⅔
Issuing commissions		
Copies of interrogatories		
Entering dismission		
Making up record	7 00	
Certificate thereof		66⅔
	37	33⅓
Attorney's tax fee	10 00	
Deposition fee	10 00	
Marshal's fees.		
Serving writ, docketing and return	2 50	
Copy of writ		50
Mileage on writ	3 00	
Summoning witnesses	7 00	
Mileage on subpœna	18 00	
McC.	31 00	
	88	33⅓
Witnesses.		
Geo. B. Augustus	23 50	
John Hardiman	25 00	
Thos. D. Wooldridge	22 50	
John Davis	21 00	
John B. Jones	22 95	
Witnesses	114	95
Total	$203	28⅓

Upon the return of which said writ of fi. fa., an alias fi. fa. issued in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of defendant Thomas Townsend, late of your district, you cause to be made the sum of thirty-four hundred and fifty-one dollars and eighty-eight cents, which Robert Jemison, lately in the district court of the United States, for the northern district of Mississippi, has recovered against him for damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendant to the said plaintiff offered, with interest on said sums at 6 per centum per annum, from the 12th day of December, 1842, till paid; also, the

sum of two hundred and eighty-six dollars and sixty-seven and ⅓ cents for his costs by him about his suit in that behalf expended, whereof the said defendant is convicted, as appears of record. And that you have the said moneys before the judge of the said district court, on the first Monday in June next, to render to the said plaintiff for his damages and costs aforesaid, and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, [L. S.] at Pontotoc, the first Monday of December, A. D. 1843, and the 68th year of the independence of the United States.

Issued the 19th day of December, 1843.

G. M. RAGSDALE, *Clerk*.

Which said summons is endorsed as follows, to wit:

Credit this execution by the whole of plaintiff's money, and one hundred and twenty-six dollars of clerk and marshal's fees, collected on fi. fa to June term, 1843, as per marshal's return thereon.

G. M. RAGSDALE, *Clerk*.

Witnesses.

G. B. Augustus	$23 50
John Hardiman	25 00
Thos. D. Wooldridge	22 50
John Davis	21 00
John B. Jones	22 95
	$114 95

Upon which said alias fi. fa. the marshal made the following return, to wit:

Stayed by myself. A. K. McCLUNG, *Marshal*.

Ent. and Ret.	50	
Mileage, 4 00; Com., 4 00	8 00	
	8 50	

Clerk's fees.

Endorsed on former execution	$37 33⅓
Docketing	
Filing papers	
Entering appearances	
Motion	
Order	
Judgment by default	
Swearing witness	
Continuance	
Venire facias	
Swearing and empannelling jury	

Receiving and entering verdict		
Entering judgment final		
Subpœna		
Taxing cost and copies		
This execution and docketing		3 16⅔
Entering return and filing		66⅔
Issuing commissions		
Copies of interrogatories		
Entering dismission		
Making up record		
Certificate thereof		
		$41 16⅔
Deposition fee		10 00
Attorney's tax fee		10 00
Witnesses named on back		114 95
Marshal's fees.		
Endoised on former execution		31 00
Levy entering and returning		2 50
Mileage on fi. fa.		4 00
Summoning witnesses		
Mileage on subpœna		
Commissions		73 06
		110 56
		$286 67⅓

And upon the return of which said alias fi. fa., a pluries fi. fa. issued on said judgment in the words and figures following, to wit:

UNITED STATES OF AMERICA,

Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of defendant Thomas Townsend, late of your district, you cause to be made the sum of thirty-four hundred and fifty-one dollars and eighty-eight cents, which Robert Jemison, lately in the district court of the United States, for the northern district of Mississippi, has recovered against him for damages, which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendant Townsend to the said plaintiff Jemison offered with interest on the said sum, at six per centum per annum, from the 12th day of December, 1842, till paid; also, the sum of two hundred and ninety-nine dollars and *one* cents for his costs by him about his suit in that be-

half expended, whereof the said defendant Townsend is convicted, as appears of record. And that you have the said moneys before the judge of the said district court on the first Monday in December next, to render to the said plaintiff Jimerson for his damages and costs aforesaid, and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1844, and the 68th year of the independence of the United States. Issued the 20th day of June, 1844.

G. M. RAGSDALE, *Clerk*.

Which said pluries fi. fa. is endorsed as follows, to wit:

Witnesses: G. B. Augustus,	23 50	John Hardiman,	25 00	$48 50
" Thos. D. Wooldridge,	22 50	John Davis,	21 00	43 50
" John B. Jones,				22 95
		Total - -		$114 95

"Credit this execution by whole of plaintiff's money, and one hundred and twenty-six dollars of clerk and marshal's fees, collected on fi. fa., to June term, 1843, as per marshal's return thereon.

G. M. RAGSDALE, *Clerk*.

Upon which said pl. fi. fa., the marshal made the following return, to wit:

Stayed by my own order.

A. K. McCLUNG, *Marshal*.

Marshal's fees—Enter. and ret.	50	
Mileage - -	4 00	
	——	4 50

Clerk's fees.

Endorsed on former execution - - - -	$41 16⅔
Issuing writ - - - - - -	
Docketing - - - - - -	
Filing papers - - - - - -	
Entering appearances - - - - -	
Motion - - - - - -	
Order - - - - - -	
Judgment by default - - - - -	
Swearing witness - - - - - -	
Continuances - - - - - -	
Venire facias - - - - - -	
Swearing and empannelling jury - - - -	
Receiving and entering verdict - - - -	
Entering judgment final - - - - -	
Subpœna - - - - - -	
Taxing cost and copies - - - - -	
This execution and docketing - - - -	3 16⅔
Entering return and filing - - - -	66⅔
Issuing commissions - - - - -	
Copies of interrogatories - - - - -	

Entering dismission	
Making up record	
Certificate thereof	
	45 00
Deposition fee	10 00
Attorney's tax fee	10 00
Witnesses named on back	114 95

Marshal's fees.

Endorsed on former execution	110 56
Docketing and return of fi. fa.	50
Copy of writ	
Mileage on same	4 00
Commissions	4 00
Mileage on subpœna	
	119 06
	$299 01

After the return of said pluries fi. fa., an alias pluries fi. fa. issued in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Mississippi, ss:

The President of the United States, to the marshal of the northern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements, of defendant Thomas Townsend, late of your district, you cause to be made the sum of thirty-four hundred and fifty-one dollars and eighty-eight cents, which Robert Jemison lately, in the district court of the United States for the northern district of Mississippi, has recovered against him, for damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendant to the said plaintiff, Jemison, offered with interest on the said sum, at 6 per centum per annum, from the 12th day of December, 1842, till paid; also the sum of three hundred and seven dollars and thirty-four cents, for his costs by him about his suit in that behalf expended, whereof the said defendant is convicted, as appears of record. And that you have the said moneys before the judge of the said district court, on the first Monday in June next, to render to the said plaintiff for his damages and costs aforesaid, and have then there this writ.

Witness the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at
[SEAL.] Pontotoc, the first Monday of December, A. D. 1844, and the 69th year of the independence of the United States.

Issued the 24th day of December, 1844.

G. M. RAGSDALE, *Clerk*.

Said alias pluries fi. fa. is endorsed as follows, to wit:

Witnesses—				
G. B. Augustus,	23 50	John Hardiman,	25 00	$48 50
Thomas D. Wooldridge,	22 50	Jno. Davis,	21 00	43 50
John B. Jones,				22 95
		Total		$114 95

Clerk's fees.

Endorsed on former execution	$45 00
Issuing writ	
Docketing	
Filing papers	
Entering appearances	
Motion	
Order	
Judgment by default	
Swearing witness	
Continuance	
Venire facias	
Swearing and empannelling jury	
Receiving and entering verdict	
Entering judgment final	
Subpœna	
Taxing cost and copies	
This execution and docketing	3 16⅔
Entering return and filing	66⅔
Issuing commissions	
Copies of interrogatories	
Entering dismission	
Making up record	
Certificate thereof	
	48 83⅓
Deposition fee	10 00
Attorney's tax fee	10 00
Witnesses named on back	114 95

Marshal's fees.

Endorsed on former execution	119 06
Docketing and returning fi. fa.	50
Copy of writ	
Mileage on same	4 00
Summoning witnesses	
Mileage on subpœna	
	123 56
	$307 34

Credit this execution by whole of plaintiff's money, and one hundred and twenty-six dollars of clerk's and marshal's fees, collected on fi. fa. to June term, 1843, as per marshal's return thereon.

G. M. RAGSDALE, *Clerk*.

Marshal's return on said pl. fi. fa., as follows, to wit:

"Received clerk's and marshal's costs, in full, and fees of witnesses, G. B. Augustus and Hardiman—the fees of witnesses, Wooldridge, Davis & Jones, remaining unsettled, defendant alleging he has paid them to the parties and misslaid receipts.

ALEX. K. McCLUNG, *Marshal*.

Witness, Augustus & Hardiman, are paid by McClung, Hardiman paid to Wm. Huddleston, who had his ticket.

A. K. McCLUNG, *Marshal*."

UNITED STATES OF AMERICA,
Northern district of Mississippi:

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, certify that the above and foregoing sixteen pages contain a full, true, and complete transcript [of] all the proceedings had in the aforesaid cause in said district court, as the same appears of record, and on file in my office.

Given under my hand and the seal of said court, at office in Ponto- [SEAL.] toc, this the 17th day of November, A. D. 1845.

G. M. RAGSDALE, *Clerk*.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the judge of the district court of the United States for the northern district of Mississippi, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment in a plea which is in the said district court, before you, between Robert Jemison, plaintiff, and Thomas Townsend, defendant, a manifest error hath happened, to the great damage of the said Thomas Townsend, as by his complaint appears.

And it being fit that the error, if any hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right,

and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, the second Monday of January, A. D. 1845, and of the independence of the United States the 69th year. Issued the 5th day of June, A. D. 1845.

[SEAL.]

G. M. RAGSDALE,
Clerk of the district court of the United States for the northern district of Mississippi.

United States of America, northern district of Mississippi, to Robert Jemison, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the northern district of Mississippi, wherein Thomas Townsend is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, at Pontotoc, the 5th day of June, A D. 1845, and in the 69th year of the independence of the United States.

S. J. GHOLSON.

Came to hand 6th June, 1845, and executed on Robert Jemison, jr., the 19th June, 1845, and on the 20th June, 1845, executed on Harris & Harrison, his council.

ANDREW A. KINCANNON,
Marshal N. D. Mi.

Marshal's fees.

Executing citation on 3 persons - - - -	$1 50
Returning citation - - - - - -	50
Mileage - - - - - - - -	4 00
	$6 00

Filed January 9, 1846.